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T.R.A. DOCKET ROOM  
September 22, 2004

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: *Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*  
Docket No. 04-00186

Dear Chairman Miller:

I am writing to respond to Mr. Hicks' letter to Chairman Miller, dated September 21, 2004, in the above-captioned docket. Attached to Mr. Hicks' letter is a brief filed by the FCC in December, 2004, in the United States Court of Appeals for the District of Columbia. Mr. Hicks then quotes from that brief purportedly to support BellSouth's position in this case. This nine-month old document is not "new" authority and this last minute effort to make an additional argument is not consistent with the parties' agreed procedural schedule. It is always appropriate to bring to the Authority's attention recently issued precedents, such as the Maine Commission decision filed by BellSouth or the commission staff reports from North Carolina and Louisiana filed by Covad, but it is generally not appropriate to file an additional brief (or letter) simply to make an argument that one should and could have made in a scheduled filing.

Nevertheless, the new "argument" of BellSouth is, in fact, not new at all. Covad has never, and does not now, dispute the statement in the FCC's brief quoted by Mr. Hicks (with emphasis added). No one questions that the FCC did "eliminate ILEC line sharing duties" under section 251 of the Act. Covad has already made this precise point in Section III.D. of its brief to the Authority in this docket.

BellSouth's obligation to continue to provide access to line sharing, however, arises under section 271 of the Act because BellSouth is a Bell Operating Company ("BOC") operating under section 271. Pursuant to section 271, BOCs have independent obligations to provide access to checklist items 4, 5, 6, and 10, including line sharing under checklist item 4, irrespective of FCC unbundling determinations for ILECs under section 251. Moreover, Mr. Hicks fails in his letter to mention that the FCC's lawyers also stated: "The FCC construed checklist items four, five, six, and ten to 'establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling' even if those network elements are


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not designated as UNEs under the section 251 impairment standard.”<sup>1</sup> That is the very point that Covad has consistently made and is fully in keeping with the staff recommendations from North Carolina and Louisiana.<sup>2</sup>

As a consequence, the Authority should reject BellSouth’s continuing efforts to avoid its obligations under section 271 and hold BellSouth to its end of the 271 deal: competitive access.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/pp

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<sup>1</sup> *Brief for Respondents*, USTA v FCC, D C Cir, Docket No 00-1012, filed December 31, 2003, p 87 (emphasis added)

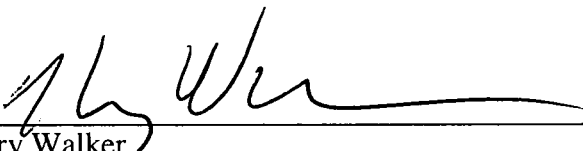
<sup>2</sup> *Public Staff Comments on Line Sharing*, NCUC Docket No P-775, Sub 8, filed September 10, 2004, ¶ 16 (“The Public Staff urges the Commission to find that line sharing is part of the Checklist Item 4 obligations of BellSouth”), *Staff’s Brief Concerning the 47 USC § 271 Status of Line Sharing*, La PSC Docket No U-28027, filed September 10, 2004, p 6 (“Staff’s position is that BellSouth has a continuing obligation to provide line sharing, in accordance with its grant of Section 271 authority”)

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded electronically and via U.S. Mail, postage prepaid, to:

Guy M. Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300

on this the 22nd day of September, 2004.



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Henry Walker